

Receipt Number

577061

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

JASON M. MALIK

Plaintiff,

-v-

Case: 2:08-cv-10537

Judge: Cook, Julian Abele

Referral MJ: Scheer, Donald A

Filed: 02-06-2008 At 12:36 PM

CMP MALIK V. SHERMETA ADAMS AND VON
ALLMEN (DA)

SHERMETA, ADAMS & VONALLMEN, P.C.

JURY TRIAL DEMANDED

Defendant.

_____/

Adam S. Alexander (P53584)

The Alexander Law Firm

18930 W 10 Mile Rd Ste 2500

Southfield, MI 48075

248-246-6353 [PH]

248-246-6355 [FX]

_____ /

PLAINTIFF'S COMPLAINT

PARTIES

1. Plaintiff Jason M. Malik ("Mr. Malik") resides in Grand Rapids, MI.
2. Plaintiff Jason M. Malik ("Mr. Malik") is a consumer as defined by the Michigan Collection Practices Act M.C.L. § 445.251(d).
3. Jason Malik ("Mr. Malik") is a consumer as defined by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").
4. Defendant, Shermeta, Adams & Von Allmen ("Shermeta") is considered a "debt collector" as contemplated by the Fair Debt Collection Practices Act ("FDCPA").

5. Defendant, Shermeta, Adams & Von Allmen (“Shermeta”) is considered a “Person” and/or “Collection Agency” as defined by the Michigan Collection Practices Act, M.C.L. § 445.251(b)and(f). Alternatively Defendant Shermeta, Adams & Von Allmen (“Shermeta”) is considered a “regulated person” under the Michigan Collection Practices Act, M.C.L. § 445.251(g).
6. Defendant – Shermeta is a “collection agency” under the Michigan Occupational Code M.C.L. §339.901(b)
7. Defendant Shermeta is considered a “debt collector” under the Fair Debt Collection Practices Act (“FDCPA”).

JURISDICTION

8. This lawsuit is being brought pursuant to 15 U.S.C. § 1692 *et seq.*, presents a Federal question and as such, jurisdiction arises under 28 U.S.C. § 1331, 1337.
9. Plaintiffs ask this Honorable Court to exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts that give rise to any Federal law claims under 28 U.S.C. §1367.
10. This lawsuit is being brought pursuant to the FDCPA and thus this court has jurisdiction under FDCPA 15 U.S.C. § 1692k(d).

GENERAL ALLEGATIONS

11. Shermeta, Adams & Von Allmen is a Michigan Professional Corporation d/b/a Shermeta, Chimko & Kilpatrick, Shermeta and Adams P.C., Shermeta & Adams P.C. and Shermeta, Adams & Von Allmen, with its registered agent Douglas H. Shermeta, maintaining an office at 445 S LIVERNOIS STE 333, ROCHESTER HILLS, MI 48307.

FACTS

12. On or around November 13, 2007 Mr. Malik went to his Post Office box to retrieve his mail.
13. Upon Mr. Malik receiving his mail he had an envelope that was sent to him Certified Mail Return Receipt Requested. This letter was from Defendant Shermeta and was a Summons and Complaint from the 7th Judicial District Court.
14. Mr. Malik does not reside in the Jurisdiction of the 7th Judicial District Court. Moreover, Mr. Malik has not resided in the 7th Judicial District Court since January 2007.
15. Defendant Shermeta is aware of this as they sent Mr. Malik an initial dunning letter on or around July 2007 at Mr. Malik's previous address in Kalamazoo MI in the 8th Judicial District Court.
16. With regards to #15 Mr. Malik sent a timely debt validation request letter to Shermeta.
17. In the Complaint filed in the 7th Judicial District Court, Defendant stated that Plaintiff was within that Court's Jurisdiction. That statement is not true and is thus false and misleading pursuant to the Michigan Collection Practices Act and the Fair Debt Collection Practices Act.
18. That Court did not have Jurisdiction over Mr. Malik and thus this is was a violation of the Fair Debt Collection Practices Act.
19. The same day Mr. Malik was served by Certified Mail he called Shermeta and informed them that the venue was improper and requested they dismiss the case or transfer it.
20. Mr. Malik also informed Shermeta that he wished to arbitrate the claims pursuant to the provisions in the card member agreement.

21. On or around November 28, 2007 Hon Judge T. Hentchel issued an Ex-Parte Order to Show cause why the case should not have been transferred to the proper jurisdiction of Mr. Malik the 61st District Court.
22. During the time from Judge Hentchel's Order until December 17th 2007 Shermeta did not stipulate with Mr. Malik to transfer or dismiss the case without prejudice, to re-file in his correct Jurisdiction.
23. Shermeta was fully aware that the 7th District was not the correct venue for Mr. Malik as they had him served in Grand Rapids approximately 68 miles north.
24. In response to the Order to Show Cause, Mr. Malik had to travel from Grand Rapids, MI to Paw Paw, MI to assert to Judge Hentchel that he already agreed that it was the wrong venue and Shermeta refused to Stipulate.
25. Upon transfer of the case to the 61st Judicial District on Judge Hentchel's Order Mr. Malik requested arbitration once again and Defendant refused.
26. In Defendant's Original Complaint they state that Plaintiff was within the 7th District Court's jurisdiction that was false and thus constitutes a violation.

COUNT I
VIOLATIONS OF THE MICHIGAN COLLECTION PRACTICES ACT

27. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.
28. Defendant has engaged in violations of the Michigan Collection Practices Act including but not limited to the following:
 - A. Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt. In violation of M.C.L. § 445.252(c).

B. Misrepresenting in a communication with a debtor 1 or more of the following:

- i. The legal status of a legal action being taken or threatened.
- ii. The legal rights of the creditor or debtor.

29. Plaintiff has suffered damages as a result of Defendant's violations of the Michigan Collection Practices Act.

30. Defendant's actions were willful.

31. To the extent that Defendant's actions were not willful they were at least negligent.

COUNT II
VIOLATIONS OF THE MICHIGAN OCCUPATIONAL CODE

32. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.

33. Defendant has engaged in violations of the Michigan Collection Practices Act including but not limited to the following:

A. Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt. In violation of M.C.L. § 339.915(e).

B. Misrepresenting in a communication with a debtor 1 or more of the following:

- iii. The legal status of a legal action being taken or threatened.
- iv. The legal rights of the creditor or debtor.

BB. In violation of M.C.L. § 339.915(f) *et seq.*

C. Failing to implement a procedure designed to prevent a violation by an employee. In violation of M.C.L. § 339.915(q).

34. Plaintiff has suffered damages as a result of Defendant's violations of the Michigan Collection Practices Act.

35. Defendant's actions were willful.

36. To the extent that Defendants actions were not willful they were at least negligent

COUNT III
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

37. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.

38. Defendant has engaged in violations of the Fair Debt Collection Practices Act including but not limited to the following:

- A. Using false, misleading or unfair methods to collect a debt(s), in violation of 15 U.S.C. §1692e.
- B. Making false representations of: a) the character, amount, or legal status of a debt(s); or b) any service rendered or compensation which may be lawfully received by Defendants for the collection of the debt(s), in violation of 15 U.S.C. §1692e(2).
- C. Using false representations or deceptive means to collect or attempt to collect debt(s) or to obtain information concerning Plaintiff, in violation of 15 U.S.C. §1692e(10).
- D. Using unfair or unconscionable means to collect or attempt to collect debt(s), in violation of the general prohibition in U.S.C., including, but not limited to attempting to collect of amounts not expressly authorized by the agreement creating the debt or permitted by law, 15 U.S.C §1692f(1).
- E. Failing to send any validation notice, or a legal validation notice relating to the alleged debt(s) in violations of 15 U.S.C. §1692g(a).
- F. Failing to bring suit in the Jurisdiction in where the debtor resides in violation of 15 U.S.C. §1692(i)(B).
- G. Failing to cease collection attempts until the alleged debt is validated upon the request of the debtor in violation of 15 U.S.C. §1692

39. Plaintiff has suffered damages as a result of Defendant's violations of the Michigan Collection Practices Act.

40. Defendant's actions were willful.

41. To the extent that Defendants actions were not willful they were at least negligent


CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter Judgment in favor of Plaintiff for:

- A. Assume jurisdiction over all claims
- B. Actual Damages
- C. Statutory Damages
- D. Treble Damages
- E. Punitive Damages
- F. Attorneys fees and costs provided by statute
- G. And any other relief this Honorable Court deems just and proper.

Respectfully Submitted,

February 01, 2008



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Southfield, MI 48075
248-246-6353

JS 44 (Rev. 12/97)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jason M. Malik

DEFENDANTS

Shermeta, Adams and Von Allmen

(b) County of Residence of First Listed Plaintiff Kent

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Oakland

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Adam S. Alexander (P53584)

18930 W. 10 Mile Rd. Ste., 2500, Southfield, MI 48075

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ALLMEN (DA)

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. C

(For Diversity Cases Only)

- | | | PTF | DEF | | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|-----|-----|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Habeas Corpus:			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692 et seq.

Brief description of cause:

Violations of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

2/6/08



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
